IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1466 of 2007

D.Manikandan .. Petitioner

Vs

1. State, rep. by its Secretary
   to Government, Prohibition and
   Excise Department, Secretariat,
   Chennai-600 009.

2. The District Collector and
   District Magistrate,
   Kancheepuram District,
   Kancheepuram. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus directing the Respondents to produce the detenu, Viz. Panneerselvam, S/o.Veerasamy, who is now detained in Central Prison, Puzhal, Chennai 66 in presence of the detention order passed by the 2nd Respondent on 16.9.2007 in BDFGISSV.No.59/2007 before the Honourable Court, call for the records, set aside the order and set the detenu at liberty.

For Petitioner : Mr.S.Swamidoss Manokaran
For Respondents: Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner, brother-in-law of the detenu by name Panneerselvam, who was incarcerated at Central Prison, Chennai, by order dated 16.9.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Bootlegger, seeks a writ of Habeas

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Corpus to call for the records in connection with the said order of detention made in BDFGISSV No.59/2007, to set aside the same and to direct the respondents to produce the detenu before this Court and set him at liberty.

2.1. On conducting a prohibition raid by the Inspector of Police, Acharapakkam Circle along with police party at Indalore Colony paddy field on 26.8.2007, the detenu was found in possession of rectified spirit and selling the same to a person and when the police smelt the rectified spirit, poisonous odour emanated. The detenu was arrested and samples of rectified spirit were taken. A case in Crime No.410 of 2007 was registered on the file of Acharapakkam Police Station for offences under Sections 4(1-A), 4(1)(i), 4(1)(aaa) of the Tamil Nadu Prohibition Act r/w 6 & 11 of RS Rules 2000 and the detenu was produced before Judicial Magistrate, Madurantakam for judicial custody. As per the chemical analysis report, the samples of rectified spirit were found to contain 8.7% mg. w/v of atropine.

2.2. On being satisfied that the detenu had acted in a manner prejudicial to the maintenance of public order and public health, after taking into consideration the five adverse cases of similar nature registered against the detenu on the file of same police station, viz., in Crime Nos.162/05, 265/06, 273/06, 337/06 and 108/07, the impugned detention order was clamped on the detenu.

3. The learned counsel for the petitioner challenges the impugned order of detention on the ground of non application of mind on the part of the detaining authority, as the detaining authority had not taken note of the fact that the specific plea raised by the petitioner in his representation dated 26.9.2007 that the detenu was taken by the police on 25.8.2007 and not on 26.8.2007, as mentioned in the detention order, was not considered in the rejection order dated 17.10.2007.

4. We have perused the entire materials placed before us. Even though in the grounds of detention, it was stated that the detenu was arrested on 26.8.2007 with respect to the ground case, in the representation made by the petitioner dated 26.9.2007, he had specifically stated that the detenu was taken on 25.8.2007 by the Police and was kept under their custody and thereafter, a false case was foisted against him. However, the first respondent, while passing the order of rejection dated 17.10.2007 rejecting the representation of the petitioner dated 26.9.2007, had not considered the contention raised by the learned counsel as to the arrest of the detenu.

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5. We are, therefore, satisfied that the detaining authority had not taken note of the above fact, which shows the non application of mind on the part of the detaining authority. Accordingly, the order of detention is vitiated and the same is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

sra

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government
   Prohibition & Excise Department
   Secretariat, Chennai 9.

2. The District Collector and
   District Magistrate,
   Kancheepuram District,
   Kancheepuram.

3. The Superintendent
   Central Prison,Puzhal,
   Chennai.

4. The Public Prosecutor
   High Court, Madras.

5.The Joint Secretary to Govt,
  Public (Law & Order) Department,
  Fort St George, Chenai-9.

MRD (co)
sg 07/01/08

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